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Docket No. CDS-222

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Robert De Leys Jian Zheng
Serial No.	:	09/605,573
Filed	:	June 28, 2000
Title	:	PEPTIDES FOR THE DETECTION OF HIV-1 GROUP 0
Art Unit	:	1448
Examiner	:	J. Parkin

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231 on

January 3, 2002
(Date of Deposit)

Stacey B. Antar
(Name of applicant, assignee, or Registered Representative)

(Signature)

January 3, 2002
(Date of Signature)

Honorable Commissioner of Patents
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This is in response to the Office Action of October 3, 2001 issued for the above-identified patent application. The period for response expires on November 3, 2001. Applicants hereby extend the period for response by two months. A Petition for an Extension of Time and authorization to charge the appropriate fee to our deposit account are enclosed.

In the Office Action the Examiner imposed a restriction requirement to eight (8) groups of claims:

a. Group I, claim(s) 1-3, 5, drawn to a single HIV-1 peptide, classified in class 530, subclasses 300, 324, 325, and 326;

b. Group II, claim(s) 4, drawn to an antibody directed against a single HIV-1 peptide, classified in class 530, subclass 387.9.

c. Group III, claim(s) 6-8, drawn to a nucleic acid encoding a single HIV-1 peptide, classified in class 536, subclass 23.72.

d. Group IV, claim(s) 9, drawn to a method for the production of a single HIV-1 peptide, classified in class 435, subclass 69.1.

e. Group V, claim(s) 10, drawn to a test kit comprising a single HIV-1 peptide, classified in class 422, subclass 61.

f. Group VI, claim(s) 11, drawn to an in vitro diagnostic assay employing a single HIV-1 peptide, classified in class 435, subclass 7.1.

g. Group VII, claim(s) 12, drawn to an in vitro diagnostic assay employing a single antibody to an HIV-1 peptide, classified in class 435, subclass 5.

h. Group VIII, claim(s) 13-15, drawn to a single HIV-1 mosaic peptide, classified in class 530, subclasses 300 and 350.

Applicants provisionally elect to prosecute Group II, with traverse. Applicants traverse the restriction requirement as improper because it is not in accord with the guidelines set forth in detail in the Manual of Patent Examining Procedure (M.P.E.P.). Specifically, M.P.E.P. § 803 provides:

> If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (Emphasis added).

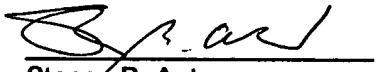
Thus, for a restriction requirement to be proper, the Examiner must establish two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden. See M.P.E.P. § 803.

Th Examiner has not met the second requirement with respect to Groups II and VII. Once the antibody has been searched, the search for an assay employing the antibody cannot be a truly "serious burden."

For these reasons, Applicants request the Examiner reconsider examining the Groups II and VII together

If any other fees are due in connection with the filing of the subject Amendment, authorization is hereby given to charge the amount of such fee to Deposit Account No. 10-0750/CDS-222/SAB in the name of Johnson & Johnson.

Respectfully submitted,



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